

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF AN APPLICATION by **NOVA SCOTIA POWER INCORPORATED**
for approval of an Open Access Transmission Tariff

BEFORE: Margaret A. M. Shears, Vice-chair
Kulvinder S. Dhillon, P. Eng., Member
John A. Morash, C.A., Member

COUNSEL: **NOVA SCOTIA POWER INCORPORATED**
Daniel M. Campbell, Q.C.

HEARING DATE: May 9, 2005

LIST OF WITNESSES: APPENDIX - A

LIST OF INTERVENORS APPENDIX - B

BOARD COUNSEL: S. Bruce Outhouse, Q.C.

**BOARD COUNSEL'S
CONSULTANTS:** Robert M. Fagan
Senior Associate
Synapse Energy Economics, Inc.

Dr. John Stutz
Vice President
Tellus Institute

DECISION DATE: May 31, 2005

DECISION: **Consensus Proposal and Open Access
Transmission Tariff Approved**

INTRODUCTION

[1] This decision is further to a public hearing on May 9, 2005, conducted by the Nova Scotia Utility and Review Board (the "Board") in the matter of an application by Nova Scotia Power Incorporated ("NSPI", the "Company", the "Utility") for approval of an Open Access Transmission Tariff ("OATT").

[2] NSPI is a regulated public utility and is the successor to Nova Scotia Power Corporation, a crown corporation which was privatized in 1992. As of January 1, 1999, NSPI became the principal subsidiary of Nova Scotia Power Holdings Incorporated, now known as Emera Incorporated.

[3] NSPI is engaged in the production and supply of electrical energy. It distributes electricity through a province-wide system and, as at December 31, 2004, served approximately 464,000 customers including six municipal electric utilities. Its electric revenues for the year 2004 were \$926.9 million and its total assets as at December 31, 2004 were \$3 billion.¹

[4] By application dated and filed with the Board on May 12, 2004, NSPI requested Board approval of an OATT. In its application, NSPI stated that the OATT would allow third parties to use the NSPI transmission system in an open and non-discriminatory manner, as contemplated by the Province's Energy Strategy entitled **Seizing the Opportunity**. NSPI further stated that, given the policy objectives of Nova Scotia's Energy Strategy, approval of this proposed OATT will provide opportunities for NSPI, Independent Power Producers ("IPP"), and electric customers. The OATT includes terms, conditions and rates for Transmission Service and Ancillary Services, service and operating

¹NSPI Financial Statements, December 31, 2004

agreements, and the Standards of Conduct under which service will be provided. This also includes NSPI's submission for Standard Generator Interconnection Procedures, applicable to generating facilities connecting to NSPI's transmission system at 69 kV and above.

[5] As a result of the priority given by NSPI and the Board to NSPI's 2004 rate case, initially filed on May 28, 2004 and materially amended by a subsequent filing on June 23, 2004, the OATT hearing was deferred until the conclusion of the rate case proceeding.

[6] NSPI's application states that:

In keeping with the policy direction of the Nova Scotia Energy Strategy, and the EMGC recommendations and developments in other jurisdictions, NSPI has developed a FERC compatible open access transmission tariff, which will ensure open and non-discriminatory access for all Eligible Customers and by this Application submits it to the Board for approval.
(Exhibit N-1, p. 7)

[7] NSPI also outlined the need for an OATT in view of the actions taken in New Brunswick:

In 2001, the Government of New Brunswick released its White Paper committing to the creation of a limited competitive electricity market in that province. Subsequently, it appointed a Market Design Committee, composed of a multi-stakeholder group, to recommend on the implementation of electricity sector policies outlined in the White Paper. In keeping with these recommendations and with prior commitments, New Brunswick Power ("NB Power") filed an Application seeking approval of a FERC proforma based OATT in June 2002. After hearings before the New Brunswick Board of Commissioners of Public Utilities (NB PUB), the NB Power OATT was approved in March 2003. The NB Power OATT contains reciprocity provisions that would deny NSPI and its affiliates access to the New Brunswick Transmission System if Nova Scotia does not have a comparable OATT. The NB PUB granted NSPI and its affiliates a temporary waiver on meeting the reciprocity requirement. It said:

The Board finds that a waiver of the reciprocity requirement is appropriate and that such a waiver should be subject to conditions. The Board finds that the conditions proposed by NB Power are reasonable and will accept them.

The conditions proposed by NB Power were as follows:

- that the Transmission System owned or controlled by the customer or its corporate affiliate be operated under a FERC Order 889 compatible Standards of Conduct prior to the commencement of service to the transmission system owner or its corporate affiliate; and
- the transmission customer or its corporate affiliate commit to the implementation of an open access transmission tariff that would be

compatible with FERC Order 888 and delivered through an Open Access Same-Time Information System (OASIS) by January 1, 2004.

The NBPUB approved these conditions except for the deadline proposed by NB Power. Instead the NBPUB decided:

The Board does not believe that a deadline of January 1, 2004 is appropriate. The Board is of the opinion that the date for expiry of the waiver of reciprocity should be January 1, 2005.

If NSPI does not have an OATT in place by January 1, 2005, it risks losing access to NB Power's Transmission System. Losing access to NB Power's transmission would decrease the value of our exports and increase the cost of our imports, as we would be required to complete these transactions at the border between New Brunswick and Nova Scotia. This impact to costs would ultimately negatively affect our customers. Decreasing the value of NSPI exports and increasing the cost of imported power puts upward pressure on the rates payable by all customers of NSPI.

With respect to the required implementation date of January 1, 2005, if the Board found that there was insufficient time in its schedule to hold a hearing on this Application within a time frame that would meet the NBPUB date, NSPI will seek an extension from the NBPUB. Given the current delays and considerable uncertainty around the opening of the New Brunswick market, it is hoped that such a request would be accommodated.²

(Exhibit N-1, pp. 10-11)

[8] In addition to the Energy Strategy, on October 18, 2004, the Province's **Electricity Act** received Royal Assent.³ This **Act** identified the six municipal electric utilities as "wholesale customers" which are permitted to "...purchase electricity from any competitive supplier." The **Act** also states that:

- s. 3(1) Effective on the date prescribed in the regulations and, for greater certainty, notwithstanding Section 303 of the Municipal Government Act, wholesale customers may purchase electricity from any competitive supplier.
- (2) Nova Scotia Power Incorporated shall develop and file with the Board for approval an open access transmission tariff to enable the purchase of electricity for the purpose of subsection (1) and, for greater certainty, Section 77 of the Public Utilities Act does not apply.
- (3) The tariff referred to in subsection (2) must ensure open and non-discriminatory access to wholesale customers.
- (4) Nova Scotia Power Incorporated shall develop and maintain a system to facilitate the import and export of electricity from the Province for the purposes of this Section.

²This date has been extended to November 1, 2005

³The **Act** has yet to be proclaimed

(5) The Board has all the power and authority necessary to implement this Section.

[9] Board Counsel utilized the services of Robert Fagan, Senior Associate with the Cambridge, Massachusetts firm of Synapse Energy Economics, Inc., and Dr. John K. Stutz, Vice President of the Boston, Massachusetts firm of Tellus Institute. Both consultants reviewed the NSPI application and its responses to Information Requests, along with information from the technical conferences and the evidence filed by other intervenors.

[10] Intervenors in this proceeding included Barrington Wind Energy Limited (“Barrington”); Canadian Manufacturers & Exporters (“CME-NS”); Electricity Consumers Alliance of Nova Scotia (“ECANS”); GasWorks Energy Corp. (“GasWorks”); Halifax Regional Municipality (“HRM”); Heritage Gas Limited (“Heritage”); Town of Lunenburg (“Lunenburg”); Minas Basin Pulp & Power Company Ltd. (“Minas Basin”); Municipal Electric Utilities of Nova Scotia Co-operative (“MEUNSC”); New Brunswick System Operator (“NBSO”); Province of Nova Scotia, Department of Energy (“NSDOE”); Stora Enso Port Hawkesbury Limited and Bowater Mersey Paper Company Limited (“SEB”). The New Democratic Party withdrew as an intervenor on May 6, 2005.

[11] There were five technical conferences held on the OATT proposal since the time of the original application. These conferences assisted in the development of a Consensus Proposal (attached as Schedule “A”), agreed to by the intervenors with respect to the proposed OATT.

[12] On May 6, 2005, NSPI filed, for the Board's approval, the Consensus Proposal, which confirmed the basis on which the proposed OATT was accepted by all intervenors in this process.

EVIDENCE

[13] In NSPI's May 6, 2005 letter which attached the Consensus Proposal and Supplementary Evidence (Exhibit N-28), NSPI states that:

... We are pleased to attach, for the Board's approval, the final consensus proposal which has been accepted by all parties to this hearing; ...

(NSPI Letter to Board - May 6, 2005)

[14] At the public hearing on May 9, 2005, NSPI's panel of witnesses consisted of Nancy Tower, Vice President, Customer Operations; Melvin Whalen, Director of Rates and Regulatory Matters; and Mark Savory, Director, Control Centre Operations and Nova Scotia System Operator. Ms. Tower confirmed that an agreement had been reached, stating that:

... This process resulted in helpful discussion of each party's interests and concerns and led directly to the consensus document which was submitted with the unanimous support and consent of all participants on May 6th. ...

(Transcript, May 9, 2005, p. 15)

[15] Dan Campbell, Counsel for NSPI, submitted Exhibit N-29 which consisted of confirmation from the intervenors that they supported the Consensus Proposal as set out in Exhibit N-28. S. Bruce Outhouse, Q.C, Board Counsel, stated that:

I should indicate, while it's perhaps a bit premature before the proposal's been presented, but Dr. John Stutz and also Mr. Fagan, who were the Board's consultants on this matter, both are in agreement with the consensus proposal. And that's - - I so stipulate that for the record on their behalf.

(Transcript, May 9, 2005, p. 9)

[16] In addition, Kevin Roherty, Counsel for the New Brunswick System Operator, confirmed his client's agreement at the hearing, stating that:

For the record, New Brunswick System Operator fully supports the consensus agreement, and as was noted, the change in the costing of ancillary services from the proxy method to the embedded cost method, in our view, increases the potential for savings on a regional basis and we look forward to working with Nova Scotia Power in that regard.

(Transcript, p. 26)

[17] Fourteen issues of concern were raised by stakeholders during the OATT process. These include such items as stranded costs, rate unbundling, energy imbalance and the question as to whether the OATT hearing would establish binding precedents for the future. Some of these issues reflect concerns of intervenors relative to matters which may arise in the future but are not significant in the context of the limited opening of the electricity market. As a result, the Consensus Proposal states that:

...

1. Precedents to be set by this OATT Hearing

Some stakeholders, who will not be eligible customers of OATT in the first phase of market opening, are participating in this hearing because of their concerns that this hearing may set precedent and limit their ability to address certain issues when the subsequent stages of market opening occurs. To address this, it is agreed that:

- i) The OATT will be reviewed in the event the market is opened more broadly, and in such a review, the decisions made in this proceeding will not be binding and shall not be treated as a precedent in any such subsequent review. Any party will be free to raise any issue in that review and NSPI will not take the position that any matter then under consideration was conclusively decided in this proceeding or determined to be appropriate for any broader market opening.
- ii) NSPI acknowledges that some parties will rely on this statement in deciding to withhold making submissions at this time.

...

(Consensus Proposal, Item 1, p. 2)

FINDINGS

[18] The Board has carefully reviewed the evidence presented in this proceeding. The Board takes particular notice of the fact that the Consensus Proposal has the approval

of all intervenors in the proceeding. Mr. Fagan and Dr. Stutz, both of whom were retained on behalf of Board Counsel, have independently reviewed the document, and have confirmed their support for the Consensus Proposal.

[19] In the Board's decision dated November 21, 2003, which approved a settlement agreement reached by NSPI and intervenors in NSPI's application for approval of depreciation rates, the Board stated that:

The Board wishes to make it clear that while it encourages the consultative process which has resulted in this negotiated settlement, it is not required to accept any agreement reached during such negotiations. Further, the Board has the right to change the terms of an agreement in the exercise of its statutory power if it is satisfied that change is warranted. The Board's responsibility to ensure that the public interest is protected is not diminished by the existence of a negotiated settlement between parties to a proceeding. However, such a settlement, especially one which has broad support among competing interests, is entitled to serious consideration by the Board.

(Board Decision, Depreciation Rates, November 21, 2003, p. 3)

[20] The Board continues to be of this view with respect to the consideration which should be given to settlement agreements. After careful consideration of the record, the Board is satisfied that the OATT, as filed with the Consensus Proposal of May 6, 2005, is fair and reasonable for this limited market opening.

[21] The Board agrees with the approach that, in view of the limited nature of the change proposed for Nova Scotia's electricity market at this time, it is not necessary or appropriate to attempt to develop an extensive OATT which addresses a number of issues which may or may not develop in future. The Consensus Proposal, in the Board's view, is appropriate in that it reflects only the steps which are necessary to make at this time, without establishing binding precedent should future, more extensive, changes occur.

[22] Accordingly, the Board approves the OATT, including the rates and charges for Transmission and Ancillary Services set out in the Tariff, and the Standard

Interconnection Procedures, all of which are attached as Schedule "B". The Board understands that the OATT will be available to eligible customers as soon as NSPI can implement the internal processes necessary to make it operational, which is expected to be completed no later than November 1, 2005.

An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 31st day of May, 2005.

Margaret A. M. Shears, Vice-chair

Kulvinder S. Dhillon, Member

John A. Morash, Member

SCHEDULE “A”

Consensus Proposal

SCHEDULE “B”

Open Access Transmission Tariff

APPENDIX - A

List of Witnesses

On behalf of

Witness

NSPI

Nancy Tower
Melvin Whalen
Mark Savory

APPENDIX - B

List of Intervenors

Barrington Wind Energy Limited	Erik Twohig
Canadian Manufacturers & Exporters Nova Scotia Division	J. D. R. (Dick) Smyth Robert Patzelt
Electricity Consumers Alliance of Nova Scotia (ECANS)	John Woods, P.Eng.
GasWorks Energy Corp.	Dwight Jeans John H. Reynolds, P. Eng.
Halifax Regional Municipality	Mary Ellen Donovan Cathie O'Toole Julian Boyle
Heritage Gas Limited	Marilyn Wappel Chris Smith
Town of Lunenburg	N. A. (Norman) Mossman
Minas Basin Pulp & Power Company Ltd.	Robert G. Grant, Q.C. Nancy G. Rubin Scott C. Travers
Municipal Electric Co-operative of Nova Scotia	Donald Regan
New Brunswick System Operator (NBSO)	Kevin Roherty
New Democratic Party Caucus Office (NDP)	Paul Black (withdrew)
Nova Scotia Department of Energy	Stephen T. McGrath Jonathan Kenyon Allan Crandlemire Scott McCoombs
Stora Enso Port Hawkesbury Limited and Bowater Mersey Paper Company Limited	George T. H. Cooper, Q.C. David S. MacDougall Adam Garrett